



CFMEU
CONSTRUCTION
AND GENERAL

WRITTEN SUBMISSION TO

THE DEPARTMENT OF THE TREASURY

ON

**THE REPORTING OF TAXABLE PAYMENTS FOR CONTRACTORS IN THE
BUILDING AND CONSTRUCTION INDUSTRY**

Monday, 20 June 2011

1. INTRODUCTION

1.1 The CFMEU (Construction & General Division) welcomes the Government's announcement to introduce a reporting regime for contractors in the building and construction industry ("BCI") through the existing 'Payment, ABN and Identification Verification System' ("PAIVS") in Part 5-30 in Schedule 1 to the *Taxation Administration Act 1953* (Cth) ("TAA 1953"). We believe it is a simple yet important step in stamping out taxation inequity as between taxpayers in the BCI and beyond. In particular, the CFMEU endorses the Department of Treasury's finding that¹:

Where non-compliance is entrenched within an industry, it acts as a disincentive for new entrants to the industry to comply with their taxation obligations. This is especially the case where non-compliant contractors are able to constantly undercut or outbid compliant rivals.

1.2 Further, the CFMEU supports the proposed measure insofar as it recognises that the existing legislative and regulatory regime has not been effective in reining in revenue lost through the widespread practice of tax avoidance and evasion in the BCI, most notably by way of sham contracting arrangements. The CFMEU projects that there are annual revenue losses of between \$58m and \$2.475bn as a result of sham contracting alone in the BCI.²

¹ At paragraph 1.1.2, 'Reporting of Taxable Payments for Contractors in the Building and Construction Industry', Consultation Paper, May 2011.

² See 'Race to the Bottom: Sham Contracting in Australia - A Report by CFMEU Construction & General' (March 2011) <http://cfmeu.asn.au/sites/default/files/downloads/nat/reports/race-to-the-bottom-sham-contracting-in-australias-construction-industry-2011-cfmeu-full-report.pdf>

- 1.3 Broadly, it is the CFMEU’s view that the proposed measure will provide much-needed assistance in tax compliance in the BCI. As stated in the Board of Taxation’s *Post-Implementation Review on the Alienation of Personal Services*³:

A reporting obligation would facilitate data matching, assist in identifying high risk taxpayers and assist compliance activity by the ATO to determine those taxpayers who should be declaring personal services income. It could also lead to a higher level of voluntary compliance with the rules by providing information on the number and value of contracts that a taxpayer earning personal services income enters into a year.

2. DESIGN OF THE PROPOSED REPORTING REGIME

‘Supply of building and construction services’

- 2.1 The CFMEU notes that the term ‘building and construction services’ is not defined as a matter of taxation law, despite having been considered in both a GST context and as part of the (now repealed) ‘Prescribed Payment System’. The CFMEU submits that in this respect, in order for the measure to have proper effect, there should be no room for doubt as to whether or not an activity or service supplied would come within the remit of the regulations. Accordingly, the CFMEU’s view is that the definition of the ‘supply of building and construction services’ should be fleshed out as part of the measure, rather than it resting on more general principles.

- 2.2 It is our view that the concept of ‘building and construction services’ as considered by the ATO in the GST Ruling GSTR 200/18⁴ - whilst useful in the context of the ruling –

³ At paragraph 5.17

http://www.taxboard.gov.au/content/reviews_and_consultations/alienation_of_personal_services_income_rules/report/PIR_Alienation_PSI_Rules.pdf

⁴ Goods and Services Tax Ruling GSTR 2000/18 – ‘Goods and services tax: construction and building services which span 1 July 2000’.

would not be a sufficient definition in and of itself for the purposes of an industry-specific PAIVS regime.

2.3 As regards the Prescribed Payment System (“PPS”), the union’s view is that with the exclusions in architectural, engineering or other professional building and construction activities, the delivery (albeit only) of goods and materials in connection with those activities, etc would potentially be too perforated to protect the integrity of the system and those working in it. The CFMEU submits that the regulations should adopt as broad a definition as possible.

2.4 The CFMEU submits that a useful point of departure in defining the “supply of building and construction services” can be found in a synthesis of pre-existing sources of law and regulation, which may include:

- The construction, alternation, extension, restoration, repair, demolition or dismantling of buildings, structures or works that form, or are to form, part of land, whether or not the buildings, structures or works are permanent;
- The construction, alteration, extension, restoration, repair, demolition or dismantling of railways (not including rolling stocks) or docks;
- The installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems; or
- Any operation that is part of, or is preparatory to, or is for rendering complete, work covered by the activities listed above, for example:
 - Site clearance, earth-moving, excavation, tunnelling and boring;
 - The laying of foundations;
 - The erection, maintenance or dismantling of scaffolding;
 - The prefabrication of made-to-order components to form part of any building, structure or works, whether carried out on-site or off-site;

- Site restoration, landscaping and the provision of roadways and other access works.

2.5 We note that the definition contained in the *Building and Construction Industry Improvement Act 2005* (Cth) (“*BCII Act 2005*”) is particularly deficient for the present purposes in that it contains wide exemptions for the resources and housing sectors, in which tax avoidance and evasion are potentially just as prevalent (if not more) than in other sectors of the industry. Accordingly, exemptions along these lines would be inconsistent with the policy objectives behind the measure and ought to be removed for the purposes of the proposed reporting measure.

2.6 The CFMEU submits that further assistance can be found in the *Building and Construction General On-site Award 2010* in clause 4.10 of that modern award:

(a) *general building and construction means:*

- (i) *the construction, alteration, extension, restoration, repair, demolition or dismantling of buildings, structures or works that form, or are to form, part of land, whether or not the buildings, structures or works are permanent and maintenance undertaken by employees of employers covered by clause 4.1 of such buildings, structures or works;*
- (ii) *site clearance, earth-moving, excavation, site restoration, landscaping and the provision of car parks and other access works associated with the activities within clause 4.10(a)(i); and*
- (iii) *the installation in any building, structure or works of fittings and services;*

(b) *civil construction means:*

- (i) *the construction, repair, maintenance or demolition of:*
 - *civil and/or mechanical engineering projects;*
 - *power transmission, light, television, radio, communication, radar, navigation, observation towers or structures;*
 - *power houses, chemical plants, hydrocarbons and/or oil treatment plants or refineries;*
 - *silos; and/or*
 - *sports and/or entertainment complexes;*
- (ii) *road making and the manufacture or preparation, applying, laying or fixing of bitumen emulsion, asphalt emulsion, bitumen or asphalt preparations, hot pre-mixed asphalt, cold paved asphalt and mastic asphalt;*

- (iii) *the prefabrication and installation of geomembranes, geotextiles and appurtenances;*
 - (iv) *dredging or sluicing work for or at premises provided for persons mentioned in or in connection with work under clause 4.10(b)(i);*
 - (v) *the testing of soil, concrete and aggregate when it is carried out at a construction site in or in connection with work under clause 4.10(b)(i);*
 - (vi) *batch plants and precast yards at a construction site in or in connection with work under clause 4.10(b)(i);*
 - (vii) *traffic management in or in connection with work under clause 4.10(b)(i);*
 - (viii) *construction and/or establishment of landscape gardens in or in connection with work under clause 4.10(b)(i), provided that this award does not apply to the:*
 - *maintenance or horticultural establishment work following practical completion of work as specified under the terms of the construction contract or project; and/or*
 - *laying-out, construction, cultivation or keeping in order of gardens in connection with private houses;*
 - (ix) *the industry or calling of either or both catering and cleaning for or at premises provided for persons mentioned in clause 4.10(b)(i);*
 - (x) *car parks excepting car park buildings and car parks within the alignment of a building; and*
 - (xi) *railways, tramways, roads, freeways, causeways, aerodromes, drains, dams, weirs, bridges, overpasses, underpasses, channels, waterworks, pipe tracks, tunnels, water and sewerage works, conduits, and all concrete work and preparation incidental thereto;*
- (c) *metal and engineering construction means:*
- (i) *metal trades work performed in the work of construction, fabrication, erection and/or installation work or work incidental thereto when it is carried out at a construction site which is specifically established for the purpose of constructing, fabricating, erecting and/or installing the following:*
 - *power stations, oil refineries, terminals and depots; chemical, petro-chemical and hydrocarbon plants; and associated plant, plant facilities and equipment;*
 - *major industrial and commercial undertakings and associated plant, plant facilities and equipment including undertakings for the processing and/or smelting of ferrous and non-ferrous metals, the processing of forest products and associated by-products, acid and fertiliser plants, cement and lime works, and other major industrial undertakings of a like nature;*
 - *plant, plant facilities and equipment in connection with the extraction, refining and/or treatment of minerals, chemicals and the like;*
 - *transmission and similar towers, transmission lines and associated plant, plant facilities and equipment;*
 - *lifts and escalators as prescribed in clause 42—Lift industry;*
 - *facilities and equipment in other engineering projects; and*

(ii) *maintenance and/or repair and/or servicing work carried out on-site by the employees of contractors or subcontractors in connection with contracts for on-site construction work referred to in clause 4.10(c)(i). This does not include any work which is incidental to or of a minor nature in relation to the work normally performed by an employee of an employer not engaged substantially in metal and engineering construction.*

2.7 We further submit that the incorporation of the definition into future regulations should not be achieved by operation of mere reference. Rather, the definition should be appropriately modified and transposed directly into the body of the regulations.

2.8 The CFMEU submits that a suitable definition of the ‘supply of building and construction services’ arising from the new measure should be the reference for all taxation purposes related to the industry.

‘Purchaser’ – Who is required to report

2.9 The CFMEU supports the proposition that this measure be aimed at business-to-business transactions, and pertain to payments made as between businesses and contractors (or sub-contractors).

2.10 However, the CFMEU submits that there is no obvious rationale for excluding from the remit of the measure all commercial actors who are not “wholly or principally engaged in the BCI”. It is the union’s view that all businesses or entities who procure building and construction services for wholly or principally commercial purposes or for the purposes of operating their business or entity, should also be subject to reporting requirements.

‘Supplier’ – Who will be reported on

2.11 The CFMEU notes that the ATO will consult with industry and software developers on the form and method of reporting on suppliers, including how to report payments for which no ABN has been quoted. We further note that our research has shown that there are approximately three ABNs for every contractor in the BCI. The CFMEU submits that the ATO should consult industry stakeholders and software developers over an ABN

verification system as an integral part of the reporting system, which would assist in 'sifting out' fraudulent misquoting of ABNs. This would assist in restoring integrity to the system.

Administration – What is required to be reported and how will this occur

- 2.12 It is noted that under the proposed measure, businesses will be required to report annually instead of quarterly by virtue of the Commissioner's discretion under section 388-55 in Schedule 1 of the *Taxation Administration Act 1953*. The CFMEU submits that the proposed change to the reporting cycle will only undermine the ATO's endeavours in data matching and identifying high risk taxpayers due to the greater volume in backlog this would create.
- 2.13 The CFMEU submits that in order for the measure to operate effectively, where multiple services are supplied as between a supplier and a purchaser, each payment for services should be reported along with the total of payments made during the quarter.
- 2.14 Further, it is submitted that the nature of services supplied should be specified as part of the reporting obligation to assist in the data-matching and identification processes.
- 2.15 All Division 405 reports should be accompanied by a signed declaration in accordance with section 388-50 in Schedule 1 of the *Taxation Administration Act 1953*.